

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	05-CV-00329 GKF-SAJ
	)	
TYSON FOODS, INC., et al.	)	

**NOTICE OF ADVICE TO THE COURT**

Cargill, Inc. and Cargill Turkey Production, LLC (“Cargill Defendants”) hereby submit the following advice to the Court regarding the Cargill Defendants’ Rule 37(b) Motion for Sanctions against Plaintiffs for their failure to abide by this Court’s discovery Orders and in particular abuse of the Federal Rule of Civil Procedure 33(d). The Cargill Defendants submit the following:

- 1) On August 28, 2007, the Cargill Defendants filed their Motion for Sanctions. (Dkt. No. 1252) One of the issues addressed in the Cargill Defendants’ Motion for Sanctions was Plaintiffs’ withdrawal of their Rule 33(d) designation of documents in response to Cargill, Inc. Interrogatory Nos. 3 and 16 and Cargill Turkey Production, LLC Interrogatory Nos. 6, 13, and 15;
- 2) On September 27, 2007, this Court heard oral argument on the Cargill Defendants’ Motion for Sanctions;
- 3) While speaking to the Rule 33(d) designation issue at the September 27 hearing, Plaintiffs’ counsel “confess[ed]” that they had “overused” the option to produce documents in originally responding to the Cargill Defendants’ interrogatories. (Sept. 27, 2007 Hrg. Tr.: Dkt. No. 1317 at 39; see also id. at 52: “We over

designated 33(d) in the beginning and we just removed those designations.”; accord id. at 64);

- 4) The Court encouraged counsel for Plaintiffs and the Cargill Defendants to meet and confer concerning Plaintiffs’ withdrawal of their Rule 33(d) designations. (Id. at 64, “I think we need to save for another day the question of whether they’re [Cargill Defendants] entitled to sanctions, monetary or otherwise and also whether or not they’re entitled to additional documentation out of that production because you said it was there and how you’re saying it’s not. . . . I would encourage you to meet and confer on this issue.”) The Court permitted the Cargill Defendants to provide the Court with supplemental briefing on this issue within two (2) weeks of the hearing. (Id. at 65);
- 5) On October 11, 2007, this Court allowed the Cargill Defendants two (2) additional days from the release of the hearing transcript to submit their supplemental briefing. (Dkt. 1314);
- 6) Counsel for the Cargill Defendants are continuing the process of meeting and conferring with Plaintiffs’ counsel concerning the Court’s comment set out in Paragraph 4 and the State’s discovery responses generally. Specifically, counsel are scheduled to meet and confer on October 19, 2007 concerning the completing the remaining agency document production and ESI issues; counsel are in the process of scheduling technical conferences with representatives of the Cargill Defendants and State Agencies to address the ESI production during the week of October 22, 2007; and counsel have agreed to meet and confer on Friday, October

19, 2007 concerning the Cargill Defendants' other discovery issues, including Plaintiffs' withdrawal of their Rule 33(d) designations ; and

- 7) The Cargill Defendants continue to believe that Plaintiffs' admitted overuse and later withdrawal of their Rule 33(d) designations is sanctionable conduct as set forth in their Motion for Sanctions. The Cargill Defendants do not waive any right to seek costs associated with Plaintiffs' abuses of the discovery process. However, the Cargill Defendants are continuing the meet and confer process to determine whether any of these outstanding discovery issues can be resolved. The Cargill Defendants, therefore, reserve their right to seek any applicable sanctions upon the completion of the on-going meet and confer process, including costs associated with Plaintiffs' abuse of Rule 33(d) designations.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I certify that on the 17<sup>th</sup> day of October, 2007, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

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